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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,605	03/15/2004	Gregory Kaufman	KAUI	2604
23699	7590	11/30/2005	EXAMINER	
CLAUSEN MILLER, P.C			CHIN, PAUL T	
SUITE 1600			ART UNIT	
10S. LASALLE STREET			PAPER NUMBER	
CHICAGO, IL 60603			3652	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,605

Applicant(s)

KAUFMAN, GREGORY

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment filed September 6, 2005, and the arguments presented therewith have been fully considered and they are persuasive. Therefore, the claim rejections have been withdrawn. However, the arguments are moots in view of a new ground(s) of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

Election/Restrictions

2. Applicant's election without traverse of the species of Figs. 1-5, readable on claims 1,3,5, and 10 in the reply filed on March 21, 2005, is acknowledged.
3. This application contains claims 6-9 and 11 are drawn to an invention nonelected with traverse filed on March 21, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1,3,5, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the recited phrase "the auxiliary handle is free to pivot about an axis defined by the leading edge independent of the main handle" (claims 1 and 10) is not clearly understood. Figures 1 and 2 clearly show that the auxiliary handle (10) is pivotal at each aperture of a respective lug (39). Note that the auxiliary handle does not pivot at an axis defined by the leading edge and the recited phrase is misleading.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 10, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (725,905) in view of Storlie (Des. 270,612).

Williams (725,905) discloses a shovel and method for using comprising a blade (1) having a concave, forward-facing surface, a rear surface, and a straight leading edge (Fig. 3), a main handle (2) fixedly attached to the blade, and an auxiliary handle (3) pivotally attached to side lugs (6) and the auxiliary handle pivots on the lugs independent of the main handle. The pivot point (or the location) of the auxiliary handle is not at or near the leading edge. However, Storlie (Des. 270,612) teaches an auxiliary handle pivots at or close to the leading edge as shown in figures 14-19. Accordingly, it would have been an obvious to those skilled in the art to move the pivot point closer to the leading edge of Williams's shovel (725,905) as taught by Storlie (Des. 270,612) in order to provide a stronger support to a user for heavier loads. When a user scooped a load on the blade, the gravity of the weight applies blade. Therefore, providing the auxiliary handle near the leading edge of the blade, which is the opposite side of the main handle, would provide a user or users easier to carry or pull the blade more efficiently. Moreover, it would have been obvious to those skilled in the art to provide a second user to help pull the auxiliary handle to provide the first user who pushes or holds the main handle.

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8. Claim 1, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt (3,119,596) (see IDS) in view of Konsztowicz (5,271,169).

Pratt (3,119,596) discloses a shovel and method for using comprising a blade (2) having a concave, forward-facing surface, a rear surface, and a straight leading edge (Figs. 1-3), a main handle (4) fixedly attached to the blade, and an auxiliary handle (Figs. 1-3) pivotally attached to side lugs and the auxiliary handle pivots on the lugs independent of the main handle. The pivot point (or the location) of the auxiliary handle is not at or near the leading edge. However, Konsztowicz (5,271,169) teaches an auxiliary handle (49,20) pivots at pivot (19) or close to the leading edge to facilitate to remove more load from the first position (Fig. 8) to the second position (Fig. 9). Accordingly, it would have been an obvious to those skilled in the art to move the pivot point closer to the leading edge of Pratt (3,119,596) as taught by Konsztowicz (5,271,169) in order to facilitate to remove more objects such as snow.

Allowable Subject Matter

9. Claims 3 and 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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12. Applicant's amendment (the addition of new limitations in claims 1 and 10) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PAUL T. CHIN** whose telephone number is (571) 272-6922. The examiner can normally be reached on **MON-THURS (7:30 -6:00 PM)**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **EILEEN LILLIS** can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Dean J. Kramer 11/28/05
DEAN J. KRAMER
PRIMARY EXAMINER